

Appl. No. 10/776,553

REMARKS

Claims 72-74 are canceled. Claims 67-71 are pending in the application.

The Examiner indicates at page 2 of the present Action that claims 72-74 are withdrawn from consideration as being directed to a non-elected invention. Without admission as to the propriety of the Examiner's statement, claims 72-74 are canceled. Entry of the amendment to the claims consisting of cancellation of claims 72-74 is requested after the Final Action in order to limit the issues on appeal.

Claims 67-71 stand rejected under 35 U.S.C. § 112, first paragraph, as being non-enabled. The Examiner indicates that this lack of enablement rejection is based partially upon the Examiner's determination of a lack of charge balance in recited compounds based upon the Examiner's calculations of negative ions and positive ions. The Examiner further contends various valence states. No basis for these contentions, either scientifically or based upon any reference, has been provided. The Examiner maintains this rejection from previous actions, stating that "applicant has not provided any evidence that the claim compounds are not ions and that they would not react with the atmosphere". However, there is no burden upon the applicant to refute any contention of the Examiner that is not supported by scientific or any other evidence. Accordingly, the Examiner's maintained rejection is unfounded and improper.

Claim 71 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that claim 71 is indefinite contending that it is unclear as to the presence of undefined materials in the recited composition. Directing attention to MPEP § 2172, applicant notes that the standard for

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determining definiteness of a claim is based upon whether a person of ordinary skill in the art could determine the metes and bounds of the claim so as to understand how to avoid infringement. Claim 71 recites a concentration limitation of a particular compound in the claimed composition, thereby further limiting subject matter recited in the claims from which it depends. One of ordinary skill would be clearly apprised of the metes and bounds of such claim. Accordingly, claim 71 meets the definiteness requirement of § 112, second paragraph.

Applicant respectfully requests entry of the cancellation of claims 72-74 at this time to allow applicant to proceed to appeal the maintained § 112 rejection of claims 67-71.

Respectfully submitted,

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